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SUBJECT: EIGHTH UN PERMANENT FORUM ON INDIGENOUS ISSUES

¶1. (SBU) Summary: The annual UN Permanent Forum on Indigenous Issues (UNPFI) concluded its two-week session on May 29. U.S. engagement as an observer delegation was warmly welcomed this year, although there are some issues of concern to us, including the adoption of language that mimics the authorities enjoyed by treaty bodies, particularly an option to call individual countries to task for non-implementation of the Declaration on the Rights of Indigenous Peoples (DRIP). With Australia's decision (and New Zealand's likely decision) to support the underlying principles of the DRIP, the U.S. finds itself increasingly isolated with respect to its decision not to support the Declaration and we may want to consider the utility of an interagency review of our domestic law and policies in this regard. We can expect continued questions related to our position, including at a planned half-day session focused on indigenous issues in North America during next year's UNPFI. End summary.

¶2. (SBU) For the first time, the United States participated in the full two weeks of the Forum, sending a representative from USUN as well as experts from L/HRR and OES for parts of the event, including a half-day special session on the Arctic. The U.S. intervention during the human rights segment signaled that the U.S. is attentive to the concerns of indigenous people and looking to collaborate on concrete proposals that would better their lives. The statement appears to have generated considerable goodwill and laid the groundwork for improved cooperation with the UNPFI. Much of the Forum was an opportunity for indigenous groups to be heard--sometimes from countries where they are not able to speak freely. Although we were present this year, our representation was still very small when compared with that of Canada, which sent a 15-person observer delegation from multiple ministries.

¶3. (SBU) Some Native American groups asked whether the U.S. would sign on to the DRIP, but most were more interested in specific issues related to their tribes. Those who raised the issue of the U.S. adopting the DRIP generally agreed that what they want is change in U.S. domestic policy so that it adapts to implement provisions of the DRIP; they did not want the U.S. to adopt the DRIP but make no changes domestically. USUN experts also listened to Native American concerns regarding climate change in a meeting with representatives of the North American Indigenous Caucus.

¶4. (SBU) The UNPFI, which has grown in attendance considerably since the 2007 adoption of the UN Declaration on the Rights of Indigenous Peoples (DRIP), has placed the concerns of indigenous people on the UN radar and serves as an example of the convening power of the United Nations. However, some observer states complained that too much of the event was spent on the airing of grievances by indigenous groups rather than on true dialogue. Canada in particular endured heavy criticism from some of its aboriginal groups.

¶ 15. (SBU) This year's UNPFII agenda involved following-up on past recommendations. Topics included economic and social development, indigenous women, the Second Decade of the World's Indigenous Peoples, Human Rights, a special half-day session on the Arctic and climate change. In looking ahead to its future work, the Forum also sought to expand its role as the body responsible for overseeing the implementation of the DRIP. The UNPFII, which is a 16-member (non-state) subsidiary body of ECOSOC mandated to provide expert advice on indigenous issues, felt emboldened by decisions by both Australia and Colombia to support underlying principles of the DRIP and by rumors that New Zealand would soon overturn its past objections to the DRIP, as well. This would place the United States and Canada as the sole countries opposed to the DRIP, although ten other countries abstained on the original vote, including the Russian Federation.

¶ 16. (SBU) The final outcome document with UNPFII's recommendations was adopted as UN document E/C.19/2009/L.10, the contents of which have been shared with IO, DRL, L, and OES. While many of the recommendations are unobjectionable, we are concerned by the adoption of a "General Comment" which aims to expand the authority of the Forum by using Article 42 of the DRIP as the basis for a new function. General comments are typically reserved for treaty bodies, which the UNPFII is not. However, paragraph 21 of the Comment claims the language of the DRIP "implies an authority to arrange dialogues with States regarding application of the Declaration and, thereafter, to follow up on its effectiveness by making conclusions relating to each State's behavior in the context of the Declaration..." There was no opportunity for observer states to formally register their objections to the draft recommendations, but USUN worked with

Canada, Australia, Sweden, and others to express our shared concerns informally to UNPFII members. The recommendations adopted by the Permanent Forum will be sent to ECOSOC for approval this summer.

¶ 17. (SBU) Comment: We will need to carefully consider our position on the General Comment during the upcoming ECOSOC general segment. We will also need to consider the role we wish to play during a planned special session on North America during next year's UNPFII, working with Canada and the Permanent Forum leadership to ensure this is a constructive session.

¶ 18. (SBU) Comment continued: The Permanent Forum is emerging as one of ECOSOC's liveliest bodies, and the U.S. is increasingly isolated in its position on the DRIP. We may wish to consider devoting more attention to international indigenous issues including by U.S. domestic agencies, and having relevant domestic agencies attend future UNPFII meetings (at least during the first week). We may also want to consider the utility of an interagency review of our domestic law and policies as they relate to our position on the DRIP.

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